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NO. _____

IN THE
SUPREME COURT OF THE UNITED STATES

_____, Term 19 ____

HENRY PEDERSEN and
ANN PEDERSEN, his wife
Petitioners

vs.

SOUTH WILLIAMSPORT AREA
SCHOOL DISTRICT, ET AL.,
Respondents

RESPONDENT'S BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

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OFFICIAL AND UNOFFICIAL REPORTS OF OPINIONS DELIVERED IN THE COURTS BELOW

The District Court on August 8, 1980, denied Defendants Motion to Dismiss and or Stay Pending Completion of Arbitration Proceedings pursuant to a collective bargaining agreement between the School District and the Union to which Henry Pedersen belonged. (Appellate Record 12(a)-14(a)).

Cross-Motions for Summary Judgment were filed and the District Court dismissed Count IV of the Complaint (abuse of process and wrongful use of process) and part of Count V (interference with contractural relations) and in all other respects denied the motions. (Appellate Record 167(a)-186(a)).

Each party again filed Motions for Summary Judgment and for Reconsideration of the prior opinions and orders and the District Court on March 26, 1981, held the grievance-arbitration procedure could satisfy due process and issues for trial under Count I (procedural due process)

were the reasons for the delay in the arbitration hearing and whether Henry Pedersen waived his right to a school board hearing. The District Court also dismissed Count III (defamation) and Count V (Breach of Contract). (Appellate Record 187(a)-223(a)).

On May 4, 1981, the District Court reversed its position and held in light of Barrantine v. Arkansas - Best Freight System, Inc., ____U.S. ____, 101 Supreme Court 1437 (1981) decided April 6, 1981 that a grievance arbitration procedure could not satisfy due process (Petitioners Brief 1 (a) - 8 (a)).

On May 18, 1981, the District Court, upon consideration of the School District's motion for entry of judgment on the special verdict dismissed the complaint on the merits holding under Pennsylvania School Code:

> "[S]ince the jury has found that Mr. Pedersen knew of his right to ask for a hearing, his failure to ask for one, for whatever reasons, discharged the board of any obligations to provide one. This being the case, all Defendants are en-

titled to judgment in their favor."
(Petitioners Brief-13 (a)).

The Unites States Court of Appeals for the Third Circuit affirmed the District Court in an opinion reported at 677 F. 2d, 312 (3rd Cir. 1982) (Petitioners' Brief 15(a) - 37(a)).

CONSTITUTIONAL PROVISIONS STATUTES AND REGULATIONS WHICH THE CASE INVOLVES

1. Pennsylvania Public Employees Relations Act Arbitration of disputes or grievances arising out of the interputation of the provisions of a collective gargaining agreement is mandatory. The procedure to be adopted is a proper subject of bargaining with the proviso that the final step shall provide for a bending decision by an arbitrator or a tri-partite board of arbitrators as the parties may agree. 43 P.S. § 1101.903

STATEMENT OF THE CASE

Henry Pedersen was an employee of the school district from December 27, 1971, until his discharge for theft and unauthorized use of school district property on November 19, 1979. During the course of his employment, Henry Pedersen was a member of the American Federation of State, County and Municipal Employees (union). At the time of his discharge, there was a collective bargaining agreement between the union and school district and work rules governing the conduct of employees. (Work Rules, 6(a) - 12(a)). On November 9, 1979, Henry Pedersen received a notice from the school district that he was being suspended for five (5) days without pay and a hearing before the school district's superintendent (Defendant, Dr. Edward A. Vollbrecht) would be held within five (5) days. (Appellate Record-16(a)). The notice was the result of Pedersen's co-employee (Defendant Danny Reaser)

reporting to the assistant to the superintendent (Defendant-Robert G. Lesher) of various acts of theft committed by Pedersen, himself and a third employee, who also was discharged, and unauthorized use of school district property. Reaser was prompted to report this when Pedersen threatened Reaser that if they got caught, Reaser could go to jail, but Pedersen and the other employee, could make restitution (Reaser's Testimony (12(a)). On November 12, 1979, Pedersen was given a notice setting forth the acts of misconduct with which he had been charged and also advising him of a hearing before the superintendent and outlining his rights at the hearing. (Appellate Record-17(a)-18(a)).

The work rules provide:

> "Written notice and a five (5) day suspension without pay, also a notice of intent to discharge at the end of the five (5) day suspension, subject to review by the school board. A hearing on the charges for dismissal to be held with the School Superintendent

during the five (5) day suspension". (Work Rules, 6(a)-12(a)).

A pre-termination hearing was held on November 15, 1979, before the superintendent. Pedersen was represented by John Hatfield, an experienced union representative. At the hearing, Reaser and Defendant George C. Michaels, another co-employee testified regarding the various acts of misconduct. At the conclusion of the hearing, the Superintendent, took a recess in order to review the testimony. After the recess he announced his decision that he would recommend to the Board of School Directors that Pedersen be discharged. The Board of School Directors, at their November 19, 1979 meeting, voted to discharge Pedersen.

Two days prior to the hearing, Pedersen met with Hatfield to review the case and discussed whether to file a grievance and proceed to arbitration or to request a hearing before the School Board of Directors. Hatfield told Pedersen that while he had a right to go to the School Board and ask for a hearing, he

recommended the arbitration procedure since he did not believe the school board would override the administration. (Hatfield's Testimony, 13(a) - 18(a)).

On November 15, 1979, Pedersen submitted a grievance to be filed by his union president and on November 20, 1979, asked him to file the grievance. (Pedersen's Testimony, 18(a)-21(a)). A few days later, he discovered the union president had not filed the grievance and he mailed it to the school district by certified mail around November 27, 1979. (Pedersen's Testimony 18(a) -21(a)). The grievance was stamped received by the school district on December 3, 1979. (Appellate Record-78(a)). Pedersen also contacted an attorney concerning his rights and was advised of his right to a school board hearing. (Pedersen's Testimony, 18(a)-21(a)). However, he never requested a hearing.

The grievance procedure consists of four (4) steps, the first three being reviews by the immediate supervisor, the financial secretary and

finally the superintendent. The fourth step is binding arbitration through the American Arbitrators Association. The grievance was denied at the third step on December 31, 1979, (Appellate Record 79(a)), and on January 3, 1980, the union advised the school district it was submitting the matter to arbitration. (Appelate Record 80(a)). On February 21, 1980, a conference was held between a union representative, the superintendent and school district solicitor in an attempt to resolve the matter. The settlement conference was unsuccessful and on March 24, 1980, the union sought and received the school district's concurrence to submit the matter to arbitration.

On April 9, 1980, the union requested the American Arbitration Association to submit a list of Arbitrators. (Appellate Record 81(a)). Two days later, the American Arbitration Association provided a list of arbitrators to the union and school district. (Appellate Record 82(a)). On April 17, 1980, the school district sent its list of acceptable arbitrators to the American Arbitration

Association. (Appellate Record 83(a)). On May 1, 1980, the American Arbitration Association reported it had not received the union's list of arbitrators. (Appellate Record 86(a)). On May 11, 1980, it reported that the lists submitted failed to produce a mutually acceptable arbitrator and a supplemental list was forwarded to the union and school district. (Appellate Record 87(a)). On May 19, 1980, the school district submitted its list of acceptable arbitrators (Appellate Record 88(a)),and on June 2, 1980, the American Arbitration Association advised that the parties had selected Mr. Peter Florey as the arbitrator and he was available for a hearing on July 22, 1980, (Appellate Record 91(a)).

The hearing was held on July 22, 1980, and the arbitrator denied the grievances finding:

> Turning to the record, it supports the charges of the informant. There was no apparent reason why Roaser had to step forward and level his accusation against Pedersen and McClosky and to implicate himself. I believe that no promise was extended to him by the District for turning in his two buddies and that he fully accepted the risk of being discharged himself.

He found himself in an untenable position: he was being blackmailed to support the machinations of Pedersen and McClosky, and was pitted against the two other guys, who, by age and personality, were much more akin to him than Pedersen and McClosky.

It may be true that the items taken by the two grievants were of no great value when compared to embezzlements of white collar criminals, who take millions with impunity. Also, the use of district facilities for the personal benefit of employees may have been a widely accepted practice at one time. However, a new wind blew when Agnoni took over the shop. After all, an employer has the right to set matters straight with proper warning. Moreover, the record does not implicate Reish, and Pedersen and McClosky apparently started their spree when Lesher put them in the driver's seat. Even if any transgressions prior to Agnoni's arrival are set aside, it is still clear that the two grievants viewed the new supervisor with great disdain and set out to make his life miserable and to flaunt his authority in a systematic fashion.

By their actions, the grievants have effectively destroyed any basis for a future employment relationship with the district and even a lengthy suspension would not correct the situation.

In light of the whole record, their grievances cannot be sustained. (Arbitrator's Decision, 23(a) - 45(a)).

Neither Pedersen nor his union appealed from the arbitrator's decision.

A hearing before the Board of School Directors was held on October 6, 1980, and on October 30, 1980, the directors voted to uphold the discharge based upon Pedersen's removal of school district property without authorization and unauthorized use of school district vehicles. An appeal by Pedersen is presently pending before the Court of Common Pleas of Lycoming County, Pennsylvania.

ARGUMENT

I

THE COURT OF APPEALS WAS CORRECT IN AFFIRMING THE DISTRICT COURT'S ENTRY OF JUDGMENT FOR RESPONDENTS WHERE THE JURY FOUND PETITIONER KNEW OF HIS RIGHT TO HEARING BUT DID NOT WAIVE HIS RIGHT TO SUCH A HEARING.

The issues presented to the jury during the first phase of the trial were (1) whether Pedersen knew of his right to a hearing before the Board of School Directors and (2) whether Pedersen waived his right to such a hearing. It is the school district's position that Pedersen was not entitled to a hearing before the Board of School Directors for the reasons set forth in Argument II.

The Pennsylvania Code, 24 P.S. §5-514 provides in part:

> "The board of school directors in any school district....shall after due notice, giving the reasons therefore, and after hearing if demanded, have the right at anytime to remove any of its officers, employees, or appointees

for incompetency, intemperance, neglect of duty, violation of any of the school laws of this Commonwealth, or other improper conduct."

The statute clearly provides that the employee must request a hearing before the Board is required to hold one. This statute comports with due process as the state may erect reasonable procedural requirements for triggering the right to an adjudication. LOGAN V. ZIMMERMAN BRUSH COMPANY, ____ U.S. _____, 102 S. Ct. 1148, 1158 (1982).

The District Court, in its December 19, 1980, Order denying Pedersen's Motion for Partial Summary Judgment held that notice of a right to a hearing is not necessary, if Pedersen knew of his right to demand a hearing. (Appellate Record 171(a)). The issue was submitted to the jury on this basis, without objection by Petitioner, and there was sufficient evidence to support their special verdict. John Hatfield, Pedersen's union representative, told Pedersen on November 13, 1979, that he had a right to request a school board hearing. He stated he recommended to Pedersen that it would be better to go the arbitration route because he did not believe the school board of directors

would rule against the administration. (Hatfield's Testimony, 13(a) - 18(a)). Furthermore, at the time of their meeting, Pedersen brought with him provisions of the Pennsylvania School Code. (Hatfield's Testimony, 13(a)-18(a)). Pedersen testified that he met with an attorney towards the end of November, 1979, and was advised of his rights to a hearing before the board of school directors. Pedersen elected not to request a hearing. As was stated by the Court of Appeals: "In these circumstances to hold that the Board is liable for damages because it did not give Pedersen formal notice of what he already knew would be indefensible." (Petitioners' Brief 23(a)).

Plaintiff's reliance upon Swartley v. Norristown Area School District, 414 A2d 153 (Pa. Commonwealth 1980) is misplaced. Swartley did not involve a question of whether the employee's due process rights were violated, but rather whether proper statutory procedures under state law were followed. Not every violation of state law gives a person a claim under federal law.

> "[T]he Plaintiffs on appeal appear to have taken the position that a federal constitutional violation follows necessarily from the fact that the individual defendants authorized municipal actions that were contrary to state law. Such a position is quite simply wrong." (Emphasis added) Ontega Cabrera v. Municipality of Babamon 562, F2d 91, 98 (1st Cir. 1977).

Here the alleged failure of state law was to advise Pedersen of his right to request a hearing before the school board of directors. The District Court of Appeals correctly held that this violation of state law would not rise to a violation of Pedersen's constitutional rights if he knew of his right to request such a hearing. Memphis Light, Gas and Water Division V. Craft, 436, U.S. 1, 98 S. Ct. 1554 (1978), does not compel a contrary result. The jury having found, on sufficient evidence, that he knew of his right to hearing before the board of school directors accordingly, there was no violation of his constitutional rights and therefore, judgment was appropriately entered on the verdict in favor of the school district and its employees.

Since under state law, the right to a school board of director's hearing is conditional, i.e., the

employee has to request the hearing, the second issue presented to the jury was unnecessary under the facts of this case. The employee need not waive the right to such a hearing in the constitutional sense, but rather not exercise his right to a hearing. Even though Pedersen knew of his right to a hearing before the board of school directors, he did not exercise this right and request a hearing.

II

THE COURT OF APPEALS WAS CORRECT IN RULING THAT PEDERSEN'S PROCEDURAL DUE PROCESS RIGHTS COULD HAVE BEEN SATISFIED BY THE ARBITRATION PROCEDURE OF THE COLLECTIVE BARGAINING AGREEMENT.

In November, 1979, the school district had a collective bargaining agreement with the union representing the maintenance employees, includind Pedersen. The collective bargaining agreement provided for a grievance procedure with the final step being binding arbitration for any dis-

.putes rising out of the agreement, including discipline and discharge of employees. Pedersen filed a grievance seeking reinstatement without loss of seniority and with full back pay and the matter proceeded through the various steps ultimately leading to arbitration. The arbitration hearing was held on July 22, 1980, and the arbitrator selected through the American Arbitration Association denied the grievances and upheld the discharge. (Arbitrator's Decision 23(a)-45(a)).

Prior to trial, the District Court consistently held that Pedersen's procedural due process rights could have been satisfied by either a hearing before the school board of directors pursuant to the school code or an arbitration hearing pursuant to the collective bargaining agreement. (Opinions of December 19, 1980, - January 26, 1981, and March 26, 1981). One week prior to trial, the District reversed its position and filed Orders May 4 & 6, 1981, (Petitioners' Brief 1(a)-8(a)), holding that in light of Barrantine v. Arkansas

Best Freight System, Inc., ___U.S. ___, 101 S. Ct. 1437 (1981) an arbitration proceedings pursuant to a collective bargaining agreement could not satisfy Pedersen's procedural due process rights. The Court of Appeals held that such an arbitration proceeding could satisfy Pedersen's procedural due process rights.

Where a public employee has an enforceable expectation of continued public employment, either by contract or statute, he may not be discharged except after notice and an opportunity to be heard. Bishop v. Wood, 426 U.S. 341, 96 S. Ct. 2074 (1976). The issue then becomes to what procedure is Pedersen entitled. The Pennsylvania School Code (24 P.S. §5-514) provides that an employee may not be discharged except after due notice and a hearing if demanded. The collective bargaining agreement provides that an employee may not be discharged except for just cause and contains a grievance procedure culminating in binding arbitration as required by the

Public Employee Relations Act (P.E.R.A.) 43 P.S. §1101.903.

Due process requires that in order to discharge such a public employee, he must be provided with the following procedural safeguards:

(1) written notice of the grounds for termination; (2) disclosure of the evidence supporting termination; (3) the right to confront and cross-examine witnesses: (4) an opportunity to be heard in person and to present witnesses and documentary evidence; (5) a neutral and detached hearing body; (6) a written statement by the fact finder as to the evidence relied upon. Chung v. Park, 514 F2d 382 (3rd Cir. 1965).

Pedersen contends that under Pennsylvaia law, he is entitled to a hearing before the board of school directors before he may be discharged. This position is quite simply worng. In Arnett v. Kennedy, 416 U.S. 314, 94 S. Ct. 1633 (1974) a majority of the Court did not hold that the forum

designated by a statute creating a property interest must be utilized. Rather once a property right such as continued employment is conferred the Court looks to the constitution to determine whether due process has been provided. It is the nature of the proceeding and not the forum which is the primary focus. Assuming for the moment Petitioner is correct, the Pa. Supreme Court in construing Section S-514 of the Pa . Public School Code together with P.E.R.A. held in Philadelphia Board of Education v. Philadelphia Federation of Teachers Local No. 3, 464, Pa. 92, 346 A2d 35 (1975) that the school board of directors may agree in a collective bargaining agreement to submit to arbitration a discharge hearing required under Section 5-514.

> "[T]he (Pa) Supreme Court has held that a school district may agree in a collective bargaining agreement to submit to arbitration the propriety of discharging a non-tenured teacher and in so deciding, rejected the argument that such a provision illegally delegated to an arbitrator, powers to remove employees conferred exclusively on the school board by provisions of the Public School Code of 1949. Board of

Education v. Philadelphia Federation of Teachers, Local No. 3, 464 Pa. 92, 346 A2d 35 (1975)." West Middlesex Area School District v. Commonwealth of Pennsylvania Board of Labor Relations, 423 A2d 781, 783, (Pa. Commonwealth 1980).

See also Pittsburgh Joint Collective Bargaining Committee v. City of Pittsburgh, 391, 2d 1318 (Pa. 1978), where the Court held that a disciplinary dispute must be submitted to arbitration pursuant to the grievance procedure rather than to the city's civil service commission pursuant to the Second Class City Code Civil Service Act, 53 P.S., Sec. 23401, et seq., stating at page 1320, "The rule is that, except when the contract clearly and expressly excludes the dispute from arbitration, the process set up in collective bargaining negotiations must prevail." In Donnellan v. Mt. Lebanon School District, 377 A2d 1054 (Pa. Commonwealth Ct. 1977) teacher filed a Complaint in county court for breach of his individual written contract rather than file a grievance under the collective bargaining agreement. The Court held that since

the dispute was arguably dealt with in the collective bargaining agreement, arbitration was the proper and only remedy presently available, under state law.

Provisions relating to discipline may properly be included in a collective bargaining agreement and if it is included, any challenge to the disciplinary action must be submitted to arbitration. Where the agreement does not contain any such provision then the employee may proceed through the procedures of the Local Agency Law and have a hearing before the School Board. Stroudsburg Area Board of Education v. Pennsylvania Labor Relations Board, 395 A2d 622 (Pa. Commonwealth 1978). See also Fairview School District v. Fairview Education Association, 368 A2d 842 (Pa. Commonwealth 1977) where terminations of temporary professional employees were handled through the grievance procedure. The union at first sought to have the matter adjudicated through the Local Agency Law, however, the

Court of Common Pleas of Erie County ruled that arbitration of the dispute pursuant to the grievance procedure was the only proper avenue for seeking redress and that such arbitration precluded resort to the Local Agency Law. (The Commonwealth Court did not rule on the correctness of this ruling, but did cite Board of Education v. Philadelphia Federation of Teachers, Local No. 3, supra.)

The common thread running through all of these cases is under Pennsylvania law, the public policy strongly favors arbitration and if the collective bargaining agreement entered in to by parties is subject to P.E.R.A., then any dispute which is arguably covered by the agreement's grievance procedure must be submitted to arbitration. Furthermore, a school board may delegate its authority to discipline employees to arbitration. Board of Education v. Philadelphia Federation of Teachers Local 3, supra. South Williamsport Area School District, a public employer subject to

P.E.R.A., entered into a collective bargaining agreement which provided for a grievance procedure and limited discharge only for just cause. The School District, therefore, delegated to the arbitrator the authority to determine whether an employee has been discharged for just cause.

The procedure given to Pedersen under the collective bargaining agreement clearly complied with due process. He received (1) written notice of the grounds for termination - the letter of November 12, 1979; (2) disclosure of the evidence supporting termination - November 15, 1979, hearing before the superintendent; (3) the right to confront and cross-examine witnesses; (4) an opportunity to be heard in person and to present witnesses and documentary evidence; (5) a neutral and detached hearing body - an arbitrator selected through the American Arbitration Association; (6) a written statement by the fact finders (here arbitrator) as to the evidence relied upon - written opinion and award.

The United States Supreme Court decision in Barrantine does not compel a contrary result that the arbitration would not provide Pedersen with the procedural due process rights to which he is entitled. Barrantine involved a claim by truck drivers that their employer violated the Fair Labor Standards Act (FLSA). The truck drivers were unsuccessful in their grievances filed pursuant to a collective bargaining agreement. They then filed claims in federal district court alleging violations of FLSA. The Court held that an employee's rights under the Act are independent of the collective bargaining agreement and need not be submitted to arbitration. The purpose FLSA is to insure that employees are protected from sub-standard wages and oppressive working hours and the employee's rights are non-waivable. The Court was concerned with a situation where the union has fairly and fully presented the employees wage claim, and the employee's statutory rights under FLSA might still not be adequately protected because arbitrators may not be conversant

with the public law considerations under the FLSA, The issue in the case presently before the Court was clearly within a labor arbitrator's expertise whether Pedersen was discharged for just cause.

In Brown v. Southeastern Pennsylvania Transportation Authority (SEPTA) 519 F.S. 864 ,(E.D. Pa. 1981), the District Court held that an arbitration procedure could satisfy due process stating at page 866:

> "The Pennsylvania Public Employee Relations Act ("PERA"), 43 P.S. §1101.201 et. seq. establishes a framework within which public employers and employees can negotiate and agree upon employee's wages and working conditions. After a collective bargaining agreement is in effect, as in the instant case, "(a)rbitration of the disputes or grievances arising out of the interpretation of the provisions of a collective bargaining agreement is mandatory." 43 P.S. § 1101.903. Except for the final state of the grievance review procedure, which must be binding arbitration, a public employer and a union may negotiate and agree upon the procedure by which employees' complaints will be reviewed. In the instant case, the grievance procedure is set forth in the collective bargaining agreement under the heading, "Grievance Procedure; Arbitration." Plaintiff has alleged that the defendants named in his complaint have denied him his right to proceed under this grievance procedure. Therefore, I find that Plaintiff has not stated a claim under 42 U.S.C. §1983."

See also Dulaney v. Board of School Commissioners of Mobile County, 512 F. Supp. 685 (S.D. Ala. 1981) where the Court held that where the employee received notice of the charges against him, appeared before the appeals council of the board to present his case, was assisted by a seasoned union representative and the members of the council were experienced in academic matters due process had been complied with. In Manning v. Bouton, 678, F2d 13 (3rd Cir. 1982) the Court held a discharged assistant attorney general should have pursued his wrongful discharge claim under the grievance procedures set forth in the collective bargaining agreement despite the fact he was not a member of the union.

Petitioners in their brief (page 32) assert that arbitration was not sufficient because (a) it was untimely (b) it was not an attempt at a due process hearing; (c) there was a potential conflict of interest on behalf of the union

and; (d) it could not grant Pedersen the full measure of relief. These assertions by the Petitioners under the facts of this case are simply untrue. At trial, Pedersen objected to any testimony being presented with respect to the timeliness of the arbitration proceeding and the potential conflict of interest on behalf of the union. The Pa. School Code does not refer to the hearing before the school board of directors as a "due process hearing". The issue is not whether the employer attempted to have a due process hearing, but rather whether the hearing provided to the Petitioner complied with due process and no where does he contend that the arbitration procedures offered him, fail to comply with due process. The final assertion that the arbitrator could not grant him full relief is absurd. In arbitration Pedersen was seeking reinstatement with back pay and no loss of seniority. (22 (a)).

It is hard to imagine what other relief the board of school directors could have awarded him.

CONCLUSION

The school district in discharging Pedersen did not violate his due process rights. He was offered notice of the charges against him and a hearing before an arbitrator pursuant to a collective bargaining agreement. The Court of Appeals was correct in holding that an arbitration proceeding such as that conducted in this case satisfied the due process procedures to which an employee is entitled.

Under Pa. Law, a school board of directors, may delegate its duty to have a board of director's hearing to an arbitrator where it is party to a collective bargaining agreement containing a provision for mandatory arbitration of disputes. Furthermore, both the District Court and Court of Appeals were correct in holding that under the Pa. School Code where an employee knows of his right to a school board of directors hearing, he must demand such a hearing.

The Court of Appeals neither departed from existing law nor created new law in its decision in this case but rather properly applied existing law to the facts of this case and accordingly this Court should deny the Petition for a Writ of Certiorari.

Respectfully submitted,

CASALE & BONNER, P.C.

By: John R Bonner
Attorneys for Respondents

AGREEMENT

THIS AGREEMENT, entered into this 17th day of October, 1977, by and between the SOUTH WILLIAMSPORT AREA SCHOOL DISTRICT, Borough of South Williamsport, Lycoming County, Pennsylvania, hereinafter called "Employer", and District Council 86, American Federation of State, County and Municipal Employees, AFL-CIO, hereinafter called "Union".

WITNESSETH:

In consideration of the mutual covenants and agreements herein set forth, the parties hereto do agree as follows:

ARTICLE IV

MANAGEMENT PREROGATIVES

Section I - Except as limited by the specific terms of this Agreement, the Employer retains the exclusive right to manage its operation and to direct the working forces including, but not limited to, the right to hire, suspend or discharge for just cause, promote and transfer employees, determine the size of the work force, job descriptions, schedules of work, hours of work and number of hours to be worked, to relieve employees from duty because of lack of work or other legitimate reasons, the setting of quality standards,

and the determinations of the source of material and supplies and the right to establish and enforce rules not inconsistent with this contract, it being understood the Employer retains all management rights not specifically limited by this Agreement.

Section 2 - While it is the policy of the Employer that sypervisors shall direct, train and instruct employees in the bargaining unit and assist in cases of any emergency, and not regularly perform work of men in the bargaining unit, the parties nevertheless recognize that from time to time supervisory employees may be required to assist in work in order to promote efficiency in operations.

ARTICLE VIII

GRIEVANCE PROCEDURE

Section 1 - Any grievance arising out of the meaning, interpretation of or compliance with the provisions of this Agreement shall be resolved according to the following procedure and any one officer of the Union, i,e, (Chief Steward, President or Vice President) shall, upon request, be given a reasonable amount of time during normal working hours to investigate or process a grievance:

Step I - the employee, either alone or accompanied

by the Union representative, or the Union where entitled, shall present the grievance, in writing on the form provided by the district, to the employee's immediate supervisor within five (5) work days of the date of the initial occurrences of the event, giving rise to the grievance. The supervisor shall attempt to resolve the matter and report his decision to the employee, in writing within five (5) work days of its presentation.

Step 2 - In the event the grievance is not settled in Step 1, the employee may appeal the same, in writing, to the Secretary of the school district within five (5) days after receiving the answer in Step 1. The Secretary of the school district shall respond in writing to the employee and Union representative within five (5) work days after receipt of the appeal.

Step 3 - In the event the grievance has not been satisfactorily resolved in Step 2, a written appeal may be made by the employee or Union representative within five (5) work days of the decision in Step 2 to the Superintendent or his designee, in writing, within ten (10) work days after receipt of the same.

Step 4 - If the grievance has not been satisfactorily resolved in Step 3, and it it meets the cri-

teria of Section 903 of Act 195, the employee or the Union may refer to the grievance to arbitration in accordance with Section 2 hereof.

Section 2 - Arbitration. If the grievance is not resolved at Atep 3, either party shall have the right to submit such grievance to arbitration in accordance with Section 903 of Act 195.

The party deciding to refer the grievance to arbitration shall notify the other party, in writing, of its intention to arbitrate within five (5) work days of the decision in Step 3. The parties, or their representatives, shall meet within seven (7) work days in receipt of such notice for the purpose of agreeing on an arbitrator. If the parties fail to agree on an arbitrator or if the arbitrator agreed on refuses to serve, the party bringing the matter to arbitration shall, within seven (7) work days notify the Bureau of Mediation and request the appointment of an arbitrator, in accordance with Section 903(1) of Act 195.

A. Arbitrators Duties - The arbitrator shall have no authority to add to, detract from or in any way change the terms of this Agreement or decide issues that are not the subject matter of this Agree-

ment, or subject to arbitration under Section 903 of Ac. 195.

B. All fees and expenses of the arbitration shall be shared equally between the parties.

C. The decision of the arbitrator shall be final and binding on both parties, except where the decision would require an enactment of legislation, in which case it shall be binding only if such legislation is enacted. This section does not however, prohibit either party from appealing to the appellate body.

Section 3 - If any grievance fails to meet the time requirements established in the procedure under Section of this Article, action on the grievance shall be deemed terminated and the last decision made shall be deemed final. If the Employer at any step fails to render its decision within the time periods established, the grievant shall be entitled to advance his grievance to the next Step. The failure to reply shall be deemed a denial.

Section 4 - The time limits provided for herein may be extended by mutual agreement of the

parties in writing.

Section 5 - All parties to a grievance may be represented at any stage thereof starting with Step 1.

WORK RULES

As the South Williamsport Area School system has grown over the years into a rather large, diverse operation, it deems necessary, to promote better understanding among the different work groups, that we operate under a standard set of working regulations. The complex nature of our operations needs to be understood by all employees. As the course of operations progresses, it is also obvious that a written set of "do's" and "do not's" would never be all encompassing, therefore, we feel it necessary to list acts of misconduct which are considered detrimental to the well-being of all. The committing of any of the following acts of misconduct will result in appropriate disciplinary action.

1. The falsification of any personnel records or any other school district records, including time sheets.

2. Insubordination, failure or refusal to carry out a work assignment.

3. Theft or removal from district premises any school district or employee property without authorization.

4. Attempting to defraud the school district by accepting or claiming pay for any period of unauthorized absence from the school district.

5. Participation in or agitation for a work stoppage or other work curtailment in violation of the labor agreement.

6. Conviction of a felony.

7. Lending orgiving school district keys to anyone not authorized by the district to receive such keys.

8. Bringing, using, possessing intoxicants or narcotics on school district premises at any time.

9. Abuse of sick leave by falsification of reasons for absence.

10. Failure to provide medical excuse for absence according to district requirements.

THE ABOVE MENTIONED VIOLATIONS WILL RESULT IN THE FOLLOWING DISCIPLINARY ACTION:

1st Offense - Written warning notice and a five (5) day suspension without pay, also a notice of intent

to discharge at the end of the five (5) day suspension, subject to review by the school board. A hearing on the charges for dismissal to be held with the School Superintendent during the five (5) day suspension.

11. Interferring or refusing to cooperate with school district security police in the performance of their duties.

12. Being under the influence of intoxicants or narcotics on school district premises at any time.

13. Habitual tardiness or repeated absence from work.

14. Immoral conduct or indecency, or using abusive, immoral, or obscene language to any fellow employee or supervisor.

15. Deliberately restricting output of work in the performance of assigned duties.

16. Gambling while on duty.

17. Failure to report for overtime work, without good reason, after agreeing to work.

18. Leaving the building or work assignment without the supervisor's permission.

19. Violating established safety rules or safety practice.

20. Endangering another employee or a student or causing injury to another employee or a student.

21. Engaging in horseplay, running, scuffling, or throwing things.

22. Smoking in non-smoking areas or deliberately creating a fire hazard.

23. Unauthorized possession of fire arms or other weapons or explosives on the premises at any time.

24. Fighting or provoking or instigating a fight on school district property, at any time. Threatening, intimidating, coercing, or interfering with other employees or supervisor.

25. Contributing to unsanitary conditions or poor housekeeping.

26. The deliberate and/or intentional destruction or damage of any school district or school district agents, tools, equipment, or property.

27. Failure to report accidents to employees, equipment or machinery.

28. Making false, vicious, or malicious statements concerning any employee, the school district or its students.

29. Countermanding orders of supervisor or assumption of management responsibilities without authority.

30. Selling, soliciting, collecting con-

tributions for any purpose or distributing any printed matter on the premises without the consent of the school district.

31. Loitering or sleeping during working hours.

32. Failure to notify supervisor of absence from work in accordance with required procedure.

33. Failure to observe assigned break time at any time other than scheduled time, without prior permission of the supervisor.

34. Use of school district vehicles, equipment, and materials for personal use without permission of the supervisor.

35. Failure to start work at the scheduled starting time, after reporting for duty.

36. Failure to notify school district of a change in address and/or telephone number within three (3) working days following such change.

37. Parking in an unauthorized area, or parking in an authorized area in such a manner so as to interfere with the movement of other employee's automobiles.

38. Allwoing unauthorized passengers on or in school district vehicles.

THE ABOVE MENTIONED VIOLATIONS WILL RESULT IN THE FOLLOWING DISCIPLINARY ACTION:

1st Offense - Written warning.

2nd Offense - Written warning and a three (3) day suspension without pay.

3rd Offense - Written notice and five (5) day suspension without pay, with notice of intent to discharge at the end of the five (5) day suspension, subject to a review by the school board. A hearing on the charges for dismissal to be held with the School Superintendent during

It is understood that the foregoing acts of misconduct do not limit the violations for which the school district may discipline an employee under the offenses covered in these acts of misconduct. The school district may exert discipline in other types of cases, should the situation warrant.

If any provision of this policy should be in conflict with provisions of the "School Code" or any labor-management agreement then in existence between the South Williamsport Area School District and any organization representing employees,

then provisions of said "School Code" or labor-management agreement shall apply.

TRIAL TESTIMONY OF DANNY REASER

What occurred?

A. Okay. We were working down the football field, and Mr. Pedersen came up to me and he pointed his finger at my nose, and he said if we ever get caught, I'll go to jail, but Mr. Pedersen and Guy McClowsky can make restitution.

BY THE COURT:

Q. Now sir, I couldn't hear the last. Say it again.

A. Okay. I would to to jail, Mr. Pedersen and Guy McClowsky could make restitution.

BY MR. BONNER:

Q. What effect did this have on you?

A. It bothered me tremendously.

Q. Then you made the phone call asking Mr. Lesher--if he would talk to you?

A. Yes.

Q. And what did Mr. Lesher tell you?

A. He said he was in a meeting, but he would come up.

Q. And did you go up to Mr. Lesher's office?

A. Yes, I did.

Q. Did you meet with him?

A. Yes, I did.

TRIAL TESTIMONY OF JOHN HATFIELD

BY MR. BONNER:

Q. Mr. Hatfield, as in your position with the union, did you receive a telephone call from Mr. Henry Pedersen on November 9, 1977?

A. Yes, in the afternoon.

Q. And what, if anything, did Mr. Pedersen relate to you at that time?

A. He wanted to set up an appointment with me in the office dealing with a letter

of suspension.

BY THE COURT:

Q. What was the date you got this call?

A. On the Ninth of November. It was probably around four o'clock, maybe five o;clock in the afternoon.

THE COURT: All right.

BY MR. BONNER:

Q. And at Mr. Pedersen's request to meet with you, did you arrange for a meeting?

A. Yes, the following Monday,

Q. Which would have been what date, sir?

A. The thirteenth.

Q. And did you, in fact, meet with Mr. Pedersen on November 13th?

A. Yes, I did.

Q. And what, if anything, any papers from the school district did Mr. Pedersen have with him at that time?

A. He brought his letter of suspension pending further investigation and he brought a copy of the work rules, and I think he brought a couple of excerpts from the school board code.

BY THE COURT:

Q. The what?

A. The School Code.

BY MR. BONNER:

Q. I show you what has been marked for identification as Plaintiff Exhibits 3 and 4 and identified by Mr. Pedersen as such and I ask you if they are the two letters of the school district which Mr. Pedersen had with him at the time?

A. These are the two official letters that he had.

Q. Now did you in fact discuss with Mr. Pedersen the contents of these two letters?

A. Yes sir.

Q. And did he request of you to represent him at the hearing of November 15?

A. At the time that we met, we went over

both the letters, the charges that were raised against him, and how to proceed. He wanted to know how we would proceed in this case.

I explained it to him we would file a grievance at the beginning of the third stage of the grievance procedure --

MR. RIEDERS: Your Honor. I'M sorry. I object to the witness narrating without there being a specific question. I also object to the content because again he is going into an arbitration and not to this issue as to whether he waived the hearing that he was entitled to.

MR. BONNER: Your Honor, I believe that there was a question on the floor as to what his conversation was with Mr. Pedersen.

THE COURT: Well, it seems to me, though, that the Plaintiff doesn't really have much opportunity to object to some subject matter which might not be proper to be heard by the jury, and so I think it would be better if you would ask him precise questions than try to narrow the answers

down as much as you can.

MR. BONNER: Okay.

BY MR. BONNER:

Q. Mr. Hatfield, If I understand you correctly then, basically you went through the contents of the two correspondence, the two pieces of correspondence?

A. Right.

Q. And Mr. Pedersen asked you about how the Union would proceed with this matter.

A. Yes.

Q. And did Mr. Pedersen ask you about any other rights that he may have?

A. Yes, He asked me about asking for a hearing before the school board.

Q. And what did you respond to him when he asked you about that?

A. My response to him was that he was fired by the administration of the school; and although he had a right to go to the school board and ask for a hearing, I didn't think

that they would overrule the administration of the school. But yet, if he wanted to take that route, he had a perfect right to do so.

TRIAL TESTIMONY OF HENRY PEDERSEN

Q. At the hearing before Dr. Vollbrecht, did you receive a notification from the school board secretary?

A. On what?

Q. On the fact that the school board had voted to terminate your employment.

A. Yes.

Q. Now was that on the Nineteenth of November that they voted? I believe that was your testimony.

A. Ibelieve so, yes.

Q. When did you contact an attorney?

A. Towards the end of November.

Q. November of 1979.

A. Yes sir.

Q. Did you ask the attorney what your

rights were that you have?

A. Yes sir.

Q. And did your attorney tell you that you had the right to request a school board hearing?

A. He advised me, yes sir.

Q. And that was in November of 1979?

A. Yes sir.

Q. When, Mr. Pedersen, did you file your grievance for labor arbitration?

A. I believe it was the Twentieth.

Q. The Twentieth.

A. I believe.

Q. Of November?

BY MR. BONNER:

Q. Who did you file it with on the Twentieth of November, Mr. Pedersen?

A. I think it was Harold Day.

Q. And after a period ot time, did you come to learn that Mr. Day had not filed it with the school district?

A. Yes.

THE COURT: We don't know who Harold Day

is.

MR. BONNER: I'm sorry.

BY MR. BONNER:

Q. Who is Mr. Day?

A. He was the local president.

Q. Your Union President?

A. the local Union President, yes.

Q. And you handed him the grievance approximately on the twentieth or the twenty-first of November.

A. No. Actually I handed it to him on the Fifteenth, really, of November.

Q. And you were at that point grieving your termination, is that right?

A. In November, yes.

Q. But in fact the school board hadn't even terminated you yet, had they?

A. No.

Q. So, then after you got the notice on the Twentieth or the Twenty-first, the school board had voted and terminated you, did you again contact Mr.

Day and ask him to have the grievance start in motion?

A. I presume that it was already in motion. I did call him on the phone and asked him.

Q. You did call him.

A. Yes.

Q. And you told him that you wanted to file a grievance.

A. Yes.

Q. Is that right?

A. Yes.

Q. And did there come a point in time a few days later that you learned that the grievance had not been filed?

A. Yes.

DEPOSITION OF HENRY PEDERSEN

It's out of Lewisburg's hands now, as I understand.

I feel when they're ready to notify me of a hearing on arbitration, that I will be notified in

due course.

Q. Through that arbitration what are you requesting, Mr. Pedersen?

A. That I be reinstated with full pay, benefits. Reinstated. Full pay, benefits. Just the way things were, you know, before.

Q. And you began that the date of Dr. Vollbrecht's decision, is that correct?

A. On Nobember 15th.

Q. When did you first contact an attorney?

A. It was in November. It was after I found out that the union official, Harold Day, hadn't processed my grievance.

Q. Who told you that Mr. Day had not processed your grievance?

A. Himself. He said he forgot.

Q. Were you present when the grievance was handed to Mr. Lesher on Ocotber the 15th at the conclusion of the hearing?

A. No.

Q. You were not present?

AMERICAN ARBITRATION ASSOCIATION

Peter Florey, Arbitrator

IN the Matter of Arbitration	:	AAA Case No. 14 30 0632 80R
between	:	
SOUTH WILLIAMSPORT AREA SCHOOL DISTRICT	:	Grievance Nos. 6-660-1135/1179/ 1181 and 6-660-1137/1178/ 1187
AND	:	
DISTRICT COUNCIL 86, American Federation of State, County and Municipal Employees	:	ARBITRATOR's OPINION AND AWARD
	:	Award Issued:
	:	July 31, 1980

Subject: Discipline - Suspension - Discharge for Theft and Use of District Property.

Contract Provision Involved:

Article IV of the October 17, 1977 Agreement.

Statement of the Award:

All six grievances are denied.

BACKGROUND

The Union protests the suspension and discharge of two Maintenance Men, Henry Pedersen and Guy McClosky. The case was heard in Williamsport, Pennsylvania, on July 22, 1980. The Union was represented by Richard A. Zamboni, Staff Representative; the District by John R. Bonner, Solicitor. Written transcripts of disciplinary hearings before the Superintendent were submitted by the parties.

The District employs about four or five maintenance men who are supervised by a working foreman. Some years back, the grievants were discharged for unauthorized use of school vehicles, but were reinstated by an arbitrator. The parties did not submit the arbitrator's decision, but there was some reference at the hearing that the arbitrator apparently based his decision on the lack of written rules. Shortly after the issuance of the decision in that case, the District promulgated rules which are attached to this decision as District Exhibit No. 1.

Apparently, Pedersen and McClosky carried a grudge against the District and their immediate supervisor, Robert Reish, as a result of this experience, and the record reflects that at least Pedersen refused to work overtime in the early part of 1979.

Reish left the District in May of 1979, and Robert G. Lesher, then an Assistant to the Superintendent, took over the direction of the maintenance force. He met with the men to work out a procedure for their cooperation. Pedersen s stepped forward and told Lesher, that, since he had the greatest seniority among the men (he also was chief shop steward for the entire bargaining unit which, in addition to Maintenance, includes the janitorial force) he would assume leadership of the men. This proposal suited the administrator since he was busy with other matters and, from then on, he relied on Pedersen to act as the working foreman. His duties even included the ordering of supplies.

However, the departure of Reish did not bring harmony to the maintenance force, which was polarized between the oldtimers, Pedersen and Mc Closky, and two newly employed men, Wayne Koch and George Michaels, who were two younger men. Between these two groups was Danny Reaser, who came to the department after the 1977 discharges of Pedersen and McClosky. His "allegiance" was sought by both groups; apparently he threw in his lot with Pedersen and McClosky, because they were the "in" group who wielded the power in the department. The younger men, especially Michaels, resented being treated as the errang (sic) boys who had to do all the heavy work.

On August 27, 1979, the District hired Fred Agnoni as a new maintenance supervisor, to the apparent consternation of Pedersen, who fully expected to be named to this position himself. He and McClosky immediately showed their displeasure by displaying minimal cooperation with Agnoni. On the other hand, Michaels finally

'spoke out and refused to do personal favors for Pedersen and McClosky.

Agnoni found that grievants' work day consisted primarily of coffee breaks and extended luncheons, and set about to tighten up discipline. He met great resistance, particularly from Pedersen, who informed him that he got rid of the prior supervisor in seven years, but that with him it would take him only seven weeks.

One particular practice which Agnoni set out to change was the habit of the men to return to the shop for their 10 minute coffee break even though they were near facilities where they could have enjoyed their respite.

Matters came to a head late in September when several maintenance men, including Pedersen, were sent to the football field for a post-game clean-up. Agnoni specifically instructed the crew to take their break at the field, which was adjacent to the junior high school where

the men could have taken a break and bought some coffee. However, Pedersen returned to the shop, allegedly to pick up his rain gear, and informed Agnoni in no uncertain terms that he would take his breaks where and when he wanted, and that he would take no instructions from any "wop." (Agnoni apparently is of Italian extraction.)

As a result, he was given a five day suspension for the following reasons:

> "This letter is written in affirmantion of action taken yesterday, October 9, 1979, in the form of your supsension for a period of five (5) days commencing at 9:00 A.M. Tuesday, October 16, 1979. This suspension is given for violation of work rule #2, i.e., "insubordination, failure or refusal to carry out a work assignment."

The following instances support this decision:

1. Failure to carry out the direct order of your immediate supervisor.

2. Use of abusive or obscene language to a supervisor or fellow worker.

3. Deliberately restricting the output of work in the performance

of assigned duties.

4. Leaving a work assignment without the supervisor's permission.

5. Threatening, intimidating, or coercing other employees or supervisor.

"It is for the aforementioned reasons that you are suspended without pay for a period of five days. As I indicated to you previously, the school district cannot sanction this type of behavior and attempt to modify it accordingly."

This action is covered by grievance No. 6-660-1137.

About the same time, Guy McClosky was assigned to paint with George Michaels. As he recalls he was not dressed properly for painting that morning, and, therefore, only taped a little bit. In any event, his "buddy", came to Lesher and complained that he was not about to "baby-sit" McClosky and do the whole job himself. As a result, McClosky was suspended for five days and given the following letter:

"This letter is wirtten in affirmation of action taken yesterday in the form of your suspension for a period of five (5) days commencing at noon on Wednesday, September 26, 1979, and concluding at 11:30 A.M. on Wednesday,

October 3, 1979. This suspension was given for violation of work rule #2, i.e. insubordination, failure or refusal to carry out a work assignment.

"The following instances support this decision:

1. Failure to cooperate with your immediate supervisor.

2. Deliberately restricting output of work in the performance of assigned duties.

3. Failure to work with fellow employee as assigned.

"It is for the aforementioned reasons that you are suspended without pay for a period of five days. As I indicated to you in our discussion, the school district cannot sanction this type of behavior from any employee.

"It is our intention that you return to work at 11:30 A.M. on Wednesday, Ocotber 3, 1979. It is my sincere desire that you reflect upon your behavior and attempt to modify it accordingly.

Michaels' actions increased the tension in the department and Pedersen and McClosky worked out Reaser to snub Koch and Michaels and to become a united team with them.

As Reaser related at the arbitration hearing, they reminded him that he had participated in the

theft of District property with them and, while they would be able to make restitution, it would be financially impossible for him to do so, and he would lose his job should they blow the whistle on him.

Reaser testified that he mulled this threat over in his mind for a little while and decided that it would be the better course of action to go to the District and make a clean breast of his involvement with Pedersen and McClosky.

Therefore, he went to see Lesher and told him of several instances in which District property had been taken by himself, Pedersen and McClosky, and gave a specific account of the use of District property and vehicles by Pedersen and McClosky.

For the purposes of the record it is not necessary to spell these out in detail; they are reflected in the transcript of the disciplinary hearings. It suffices to state that both Pedersen and McClosky pretty much treated the workplace as

their own shop and spent considerable time in working on their projects. Also, they had no hesitancy in using school supplies.

In addition, Pedersen took inventories of District tools which had been issued to the maintenance men out of the files after Reish left and handed them to the employees to dispose of them as they saw fit.

After the District reviewed the information provided by Reaser, it suspended all three men for five days subject to discharge.

The notice given to Pedersen:

> "You are hereby advised that the hearing before South Williamsport School Superintendent concerning your suspension and intent to discharge will be held on Thursday, November 15, 1979, at 3:15 P.M. at the Superintendent's office in the South Williamsport Area High School.
>
> "You are further notified that you have the right at this hearing to be represented by council of your choice, to present witnesses, to testify yourself and to cross examine any witnesses that may be called to testify against you.
>
> "The acts of misconduct for which you have been suspended involves the following:

1. Theft or removal from district premises, school district property without authorization.

2. Unauthorized use of district property or vehicles.

3. Agitation for a work stoppage or work curtailment in violation of the labor agreement.

4. Repeated absences from work.

5. Use of obscene and abusive language to fellow employees and supervisor.

6. Deliberately restricting output of work in the performance of assigned duties.

7. Leaving a work assignment without the supervisor's permission.

8. Making vicious or malicious statements concerning your supervisor.

9. Failure to start work at the scheduled starting time after reporting for duty.

10. Threatening, intimidating, coercing or interfering with other employees or supervisor.

11. Failure to notify supervisor of absences from work in accordance with required procedure.

"Again you are notified to appear for the hearing set forth above and further notified that the hearing will be held in your absence if you so desire."

The notice given to McClosky read:

"You are hereby advised that the hearing before South Williamsport School Superintendent concerning your suspension and intent to discharge will be held on Thursday, November 15, 1979, at 4:00 P.M. at the Superintendent's office in the South Williamsport Area High School.

"You are further notified that you have the right at this hearing to be represented by council of your choice, to present witnesses, to testify yourself and to cross examine any witnesses that may be called to testify against you.

"The acts of misconduct for which you have been suspended involve the following:

1. Insubordination, failure or refusal to carry out a work assignment.

2. Theft or removal from the district premises, school district property without authorization.

3. Agitation for a work stoppage or work curtailment in violation of the labor agreement.

4. Abusive or obscene language toward your supervisor.

5. Deliberately restricting output of work in the performance of assigned duties.

6. Deliberate or intentional destruction or damage of school district property.

7. Making vicious or malicious statements concerning your supervisor.

8. Countermanding orders of your supervisor.

9. Failure to notify supervisor of absences from work in accordance with required procedure.

10. Threatening a fellow employee.

11. Failure to start work at the scheduled starting time after reporting for duties.

"Again you are notified to appear for the hearing set forth above and further notified that the hearing will be held in your absence if you so desire."

As a result of the hearings, the District decided to discharge Pedersen and McClosky, but to commute Reaser's discipline to a five day disciplinary suspension and restitution.

In the case of Pedersen the superintendent made the following statement at the disciplinary hearing:

"Are we back on the record? In my deliberations during the recess, I reviewed the notes and the testimony as presented. I believe that the testimony as presented by the individual witnesses represents and demonstrates very serious infractions of school regulations and policies, as well as very serious infractions of the law which I believe are credible, and cannot condone. This shows evidence of work related problems regarding employee misconduct. I am requesting the School District Solicitor, Mr. Bonner, review the evidence

and determine a course of legal action. In addition, my decision is that Mr. Pedersen be terminated from the School District effective November 19, 1979, the end of the suspension period. This decision will be presented to the Board of Education, in Executive Session. The facts will be placed on record in Mr. Pedersen's personnel file."

His verdict concerning Mr. McClosky was:

"I'd like to note that this responsibility is an extremely unpleasant one for a variety of reasons, as I'm sure it is for those individuals sitting around the table. In my deliberations during the recess that we just had, I find the following:

"I believe the witnesses to be credible, that the testimony presented by these witnesses demonstrates extremely serious infractions of the school regulations, policies, in addition, very serious infractions of the school, of the law. It also has been shown that Mr. McCloskey has demonstrated misconduct in the accomplishment of work duty assigned to him, in particular in terms of using School District facilities. I'm directing the School District Solicitor to review this evidence and determine a course of legal action. Finally, my decision is that Mr. McClosky be terminated from the School District, effective November 19, 1979. This decision will be presented to the Board of Education in Executive Session where personnel matters are handled. In addition, I want the facts to be placed in record in Mr. McClosky's personnel file. Thank you."

The superintendent's reasoning in the case of Danny Reaser was:

> "this is the hearing of Mr. Danny Reaser, the South Williamsport Area School District, November 15, 1979. In my deliberations during this recess, I have taken the following into consideration. 1. The facts as presented by Mr. Bonner, the School Solicitor, regarding the theft of School District property and the plea for leniency on the part of the Assistant Superintendent, Mr. Robert Lesher, I do consider the 8 year unblemished record to be significant, Danny. Secondly, I respect the fact that you did come forth with a cooperative attitude in relating of the facts with a cooperative attitude in relating of the facts and circumstances surrounding the theft of School District property. While I must condemn this kind of behavior, I cannot but admit that in essence your role was questionable with regard to leading in this particular activity. My decision is that you make restitution, that Mr. Lesher prepare an itemized list and the costs involved, and submit that to Mr. Reaser through Mr. Bonner, and that you serve the remainder of your suspension without pay up to Monday, November 19, 1979, and that you be reinstated on that day as a maintenance employee. This decision will be presented to the Board of Education in Executive Session which means that it will not be public, and the incident be placed in Mr. Reaser's personnel file. Thank you."

At the arbitration hearing, Reaser gave a detailed account of the alleged offenses. Both grievants categorically denied his charges, with one exception: they acknowledged that they split a case of butter, but placed the incident in an earlier year and explained that the case had been given to them by a warehouseman because it had been damaged.

The District asked the arbitrator to resolve the question of credibility in favor of the school system. It points out that Pedersen considered himself the kingpin in the maintenance department and was very upset when he was forced to accept the orders of a new supervisor. As the District views the events reflected in the record, Pedersen and McClosky had a good thing going for themselves, and were offended not only when it came to an end, but also when they found out the two younger men would no longer do their bidding.

The Union, on the other hand, discredits Reaser's account and points out that the School District never undertook a serious investigation and failed to make searches at grievant's homes, for the property they allegedly took from the school district.

The Union also argues that disparate penalities were meted out in this case: Reaser got off with a mere five-day suspension while the two grievants were fired.

As the Union sees it, it was common practice among employees to work in the shop on their own projects. It explains that both grievants worked on their own equipment during their lunch hour and before or after work hours. It also belittles the rule infractions of the two grievants as not serious enough for discharge.

Turning to the disciplinary proceedings, the Union points out that the discharge letter cites the same offenses for which grievants already were suspended previously. It also attacks the

rules of the District as unreasonable, since they permit "piggy backing."

FINDINGS

Turning first to the rules promulgated by the District, it is apparent that they fall into two groups. The first group covers serious offenses for which discharge can be imposed for the first offense if the situation warrants it. The second group of offenses has a more formal system of progressive discipline, where a written warning is given for the first offense, followed by a three day suspension for the second offense, and a written notice and five days suspension subject to discharge for the third offense.

On their face, these rules do not seem to be unreasonable; they follow the patern of similar disciplinary systems. In the end, it always depends how an employer implements rules or applies them in a given circumstance and, for this reason, we have to review each individual instance.

Turning first to Pedersen's open and continuing defiance of Agnoni's authority, for which the football field work assignment was only the triggering incident, it is clear that the District had proper cause to take a very serious view of Pedersen's attitude and actions, and that a five-day suspension was proper at the time.

Likewise, McClosky obviously tested Agnoni's resolve when he refused to accept the painting assignment, and he was properly given a give-day suspension for his insubordination. Apparently, other circumstances were present in McClosky's case which were not fully developed at the hearing. Right after his discharge he also quit his job as a prison guard and put himself under a doctor's care. By his own account he had not recovered yet at the time of the arbitration hearing. Therefore, it is quite likely that, as charged by Reaser, McClosky actually was disabled during the latter part of his employment with the District and performed very

little actual work but was content to have the "young Turks" work under his supervision.

Coming to the actual discharges, it would not be reasonable to treat the District's disciplinary letters as "indictments" and to expect the employer to prove every single allegation. It is obvious that the documents were drawn up by a layman who attempted to list all known derelictions of the two men, thereby combining their past records with the incidents which triggered the discharge. As a result, these letters recite the whole disciplinary background of each grievant and set the stage for the disciplinary hearing in which the Administration planned to consider not only the immediate transgression of the employees, but also to review their whole record in order to support the reasonableness of the penalties. Therefore, the wording of these letters cannot affect the discipline.

Turning to the record, it supports the charges of the informant. There was no apparent

reason why Reaser had to step forward and level his accusation against Pedersen and McClosky and to implicate himself. I believe Reaser that no promise was extended to him by the District for turning in his two buddies and that he fully accepted the risk of being discharged himself.

He found himself in an untenalbe position: he was being blackmailed to support the machinations of Pedersen and McClosky, and was pitted against the two other guys, who, by age and personality, were much more akin to him than Pedersen and McClosky.

It may be true that the items taken by the two grievants were of no great value when compared to embezzlements of white collar criminals, who take millions of dollars with impunity. Also, the use of district facilities for the personal benefit of employees may have been a widely accepted practice at one time. However, a new wind blew when Agnoni took over the shop. After all, an employer has the right to set matters straight

with proper warning. Moreover, the record does not implicate Reish, and Pedersen and McClosky apparently started their spree when Lesher put them in the driver's seat. Even if any transgressions prior to Agnoni's arrival are set aside, it is still clear that the two grievants viewed the new supervisor with great disdain and set out to make his life miserable and to flaunt his authority in a systematic fashion.

By their actions, the grievants have effectively destroyed any basis for a future employment relationship with the District and even a lengthy suspension would not correct this situation.

In light of the whole record, their grievances cannot be sustained.

AWARD

All six grievances are denied.

Peter Florey,
Arbitrator

Note: At the hearing, the Union charged, but failed to prove convincingly that Agnoni master-minded an assult on Pedersen who had several teeth knocked out by two men who jumped him at a football game. The matter is in the courts and cannot reasonably affect the outcome of this case. Should Agnoni be the culprit, he clearly acted as an individual because Pedersen insulted his Italian heritage and not in any official capacity for the District.